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| 10/098,512 | 03/18/2002 | Jean-Louis Bougamont | BOUG3002CONJDB | 3746 |

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10/20/2003

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/098,512

Applicant(s)

Bougamont et al.

Examiner

Shian T Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/14/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 14-23 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11,12, 14, 16,17, 19,20, 22,23 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Weisberg (US 4,179,027) in view of Olstein (US 5,142,010) and Roenigk (US 5,541,233) or Zhou et al (US 6,270,754). Weisberg discloses a flexible liquid filled receptacle 2 for storing a deformable insert therein. The insert is immersed within the liquid and has a periphery that substantially matches the inside shape of the receptacle. Any space not occupied by the insert within the receptacle allows the deformation of the receptacle walls. The insert is free to move within the receptacle. Weisberg fails to disclose the anti-contamination material as recited in claim 11. But Roenigk teaches a sponge with anti-microbial agent. The background of the invention discussed the need of a sponge that does not contain unwanted microorganism. Olstein teaches that inappropriate growth of a variety of organisms has been a problem for many years. Unicellular and multi-cellular organisms have caused degradation of natural product materials, infection in humans and other animals, spoilage of foods, chemical degradation of synthetic material. One way to prevent the degradation is to provide a polymer composition with anti-microbial property. The anti-microbial composition is impregnated on the sponge which makes the material resistant from infection and degradation of the product. Zhou et al. also teaches a sponge with antibacterial composition. Hence, it would

have been obvious in view of Olstein and Roenigk to provide anti-contamination material in the package of Weisberg to prevent bacterial buildup.

With respect to claims 19 and 23, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893); See also *In re Heinrich*, 268 F.2d 753, 756, 122 USPQ 388, 390 (CCPA 1959). Also, it would have been obvious to make the insert from granules since the sponge of Weisberg is already made out many small pieces.

3. Claim 15 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above, further in view of Official Notice. Weisburg discloses all of the elements of the claims, but lacks an insert made up of a single piece and a peripheral groove formed halfway along the insert. However, the peripheral groove is conventionally known and does not appear significant since the insert provides sufficient room within the receptacle to push out the article.

4. Claims 18 and 21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claim 11, further in view of Bougamont (WO 97/10160). Weisburg discloses all of the elements of the claims, but lacks the bacterial agent and the porosity of the material constituting the insert. However, Bougamont suggests providing antibacterial agent in a dispenser for a product packaged in liquid, for pharmaceutical applications. Therefore, it would have been obvious in view of Bougamont to provide antibacterial agent on the insert of Weisburg to prevent bacterial buildup. It would also have been obvious to provide the desired porosity for the sponge material to absorb the liquid content

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within the insert. With respect to claim 21, the insert could be made out of ordinary sponge material but the depending upon the chemical substance L, it could provide an antioxidant action.

Response to Arguments

5. Applicant's arguments with respect to claims 11-23 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

6. Claim 13 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 24 is allowed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The **Group clerical receptionist number is (703) 308-1148** or the **Tech Center 3700 Customer Service Center number is (703) 306-5648**.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302 and for After Final Amendment the number is (703) 872-9303. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on T-F from 7:00am to 4:00pm EST.

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STL

October 16, 2003

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Primary Examiner

Shian Luong

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